

7 SEP 2011 RCUD

Congress of the United States

Washington, DC 20515

August 31, 2011

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TCPA

1242

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

We write to urge the Federal Communications Commission (Commission) to take action on a Petition for Declaratory Ruling filed by Anda, Inc., on November 30, 2010. The Petition concerns Commission rules, which require fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice required for unsolicited fax advertisements. The Petition asks the Commission to identify the statutory basis for that notice requirement and has been languishing for eight months without any Commission action.

Due to the lack of statutory citation by the Commission, a number of class-action lawsuits have been filed and threaten to impose massive liability on legitimate businesses that are simply communicating with customers in the method that the *customer* has requested.

The Commission's imposition of an opt-out notice requirement for *solicited* faxes appears to depart from Congress's intent in enacting the Junk Fax Prevention Act of 2005 (JFPA). The JFPA expressly restored businesses' ability to send fax advertisements based on an established business relationship (EBR). The JFPA required that in cases of an EBR, the sender include a detailed opt-out notice, allowing the recipient's wishes regarding further fax communication to be clearly known. In contrast, there was no reason to extend the opt-out notice requirement to fax advertisements sent *with the recipient's express consent*, and the JFPA nowhere imposes such a requirement. Where recipients have made their wishes known by expressly opting *in* to receiving such faxes, that business or individual need not be told how to opt *out*.

In an economic environment where businesses are struggling to regain their footing and to raise the capital needed for new investment and job creation, they should not be subject to potentially crippling class action lawsuits simply because the FCC failed to clarify the statutory basis for requiring opt-out notices on solicited faxes. The longer this confusion about the rule's legal basis persists, the more pervasive these debilitating lawsuits will become—exposing legitimate advertisers to massive unintended damages.

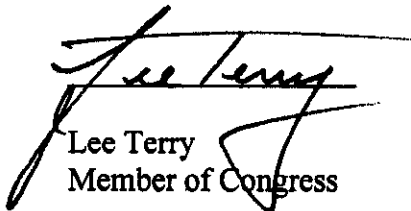
Page 2

The Honorable Julius Genachowski

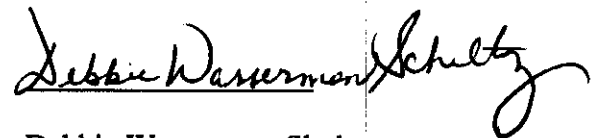
The Commission should carefully consider the Petition and, if needed, open a proceeding to clarify the rule's legal basis, so that legitimate businesses are not subject to debilitating lawsuits that Congress never intended to authorize.

Please provide a response by September 9, 2011 that advises us of your timeline for addressing the Petition and whether you intend to seek public comment to facilitate development of a more complete record on this matter. We look forward to your response.

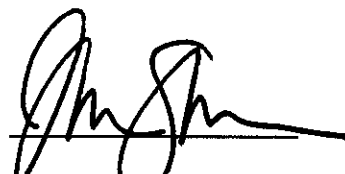
Sincerely,




Lee Terry
Member of Congress



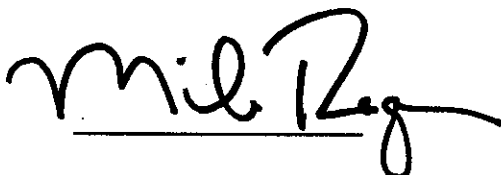
Debbie Wasserman-Schultz
Member of Congress



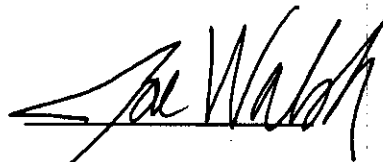
John Shimkus
Member of Congress



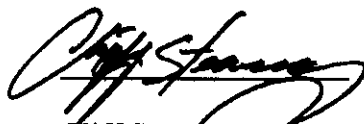
Jim Matheson
Member of Congress



Mike Rogers
Member of Congress



Joe Walsh
Member of Congress



Cliff Stearns
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION

Tuesday, September 27, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Debbie Wasserman Schultz
U.S. House of Representatives
118 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Wasserman Schultz:

Thank you for your letter regarding the Petition for Declaratory Ruling filed with the Commission by Anda, Inc. on November 30, 2010. The Petition requests the Commission to clarify the statutory basis for its rule, Section 64.1200, which requires fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice that is required for unsolicited fax advertisements. In your letter, you urge that we take action to address the issues raised in the Petition and question the Commission's authority to impose such a requirement.

Please be assured that the Petition is under active review, and the Commission will take action on it as expeditiously as possible. I appreciate your interest in this important matter. Should you have additional questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Genachowski", is written over a horizontal line. Below the signature, the name "Julius Genachowski" is printed.

Julius Genachowski



FEDERAL COMMUNICATIONS COMMISSION

Tuesday, September 27, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Joe R. Walsh
U.S. House of Representatives
432 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Walsh:

Thank you for your letter regarding the Petition for Declaratory Ruling filed with the Commission by Anda, Inc. on November 30, 2010. The Petition requests the Commission to clarify the statutory basis for its rule, Section 64.1200, which requires fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice that is required for unsolicited fax advertisements. In your letter, you urge that we take action to address the issues raised in the Petition and question the Commission's authority to impose such a requirement.

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Sincerely,

A handwritten signature in black ink, appearing to be "JG", is written over the word "Sincerely,". The signature is stylized and fluid.

Julius Genachowski



FEDERAL COMMUNICATIONS COMMISSION

Tuesday, September 27, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Cliff Stearns
U.S. House of Representatives
2306 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Stearns:

Thank you for your letter regarding the Petition for Declaratory Ruling filed with the Commission by Anda, Inc. on November 30, 2010. The Petition requests the Commission to clarify the statutory basis for its rule, Section 64.1200, which requires fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice that is required for unsolicited fax advertisements. In your letter, you urge that we take action to address the issues raised in the Petition and question the Commission's authority to impose such a requirement.

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Sincerely,

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Julius Genachowski



FEDERAL COMMUNICATIONS COMMISSION

Tuesday, September 27, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable John M. Shimkus
U.S. House of Representatives
2452 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Shimkus:

Thank you for your letter regarding the Petition for Declaratory Ruling filed with the Commission by Anda, Inc. on November 30, 2010. The Petition requests the Commission to clarify the statutory basis for its rule, Section 64.1200, which requires fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice that is required for unsolicited fax advertisements. In your letter, you urge that we take action to address the issues raised in the Petition and question the Commission's authority to impose such a requirement.

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Sincerely,

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Julius Genachowski



FEDERAL COMMUNICATIONS COMMISSION

Tuesday, September 27, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Mike Rogers
U.S. House of Representatives
133 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Rogers:

Thank you for your letter regarding the Petition for Declaratory Ruling filed with the Commission by Anda, Inc. on November 30, 2010. The Petition requests the Commission to clarify the statutory basis for its rule, Section 64.1200, which requires fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice that is required for unsolicited fax advertisements. In your letter, you urge that we take action to address the issues raised in the Petition and question the Commission's authority to impose such a requirement.

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Sincerely,

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Julius Genachowski



FEDERAL COMMUNICATIONS COMMISSION

Tuesday, September 27, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Jim Matheson
U.S. House of Representatives
2434 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Matheson:

Thank you for your letter regarding the Petition for Declaratory Ruling filed with the Commission by Anda, Inc. on November 30, 2010. The Petition requests the Commission to clarify the statutory basis for its rule, Section 64.1200, which requires fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice that is required for unsolicited fax advertisements. In your letter, you urge that we take action to address the issues raised in the Petition and question the Commission's authority to impose such a requirement.

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Sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a small dot.

Julius Genachowski



FEDERAL COMMUNICATIONS COMMISSION

Tuesday, September 27, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Lee Terry
U.S. House of Representatives
2331 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Terry:

Thank you for your letter regarding the Petition for Declaratory Ruling filed with the Commission by Anda, Inc. on November 30, 2010. The Petition requests the Commission to clarify the statutory basis for its rule, Section 64.1200, which requires fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice that is required for unsolicited fax advertisements. In your letter, you urge that we take action to address the issues raised in the Petition and question the Commission's authority to impose such a requirement.

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Julius Genachowski